

AMENDED IN ASSEMBLY AUGUST 7, 2012

AMENDED IN ASSEMBLY JUNE 25, 2012

AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 210

Introduced by Senator Hancock

February 8, 2011

An act to amend Sections 1270, 1275, and 1318.1 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 210, as amended, Hancock. Criminal procedure: release on defendant's own recognizance.

(1) Existing law provides that a defendant who is in custody and arraigned for a misdemeanor offense, or who has been arrested upon an out-of-county warrant arising from a case involving only misdemeanors, is entitled to be released on his or her own recognizance unless the court finds that the release will compromise public safety or will not reasonably ensure the appearance of the defendant, in which case the court is required to set bail and specify conditions, if any, for release.

This bill would authorize a court to determine, in any case that is before a court upon an accusatory pleading concerning the commission of a felony punishable by imprisonment in a county jail, whether the defendant may be released on his or her own recognizance. In making this decision, the bill would require the court to determine whether the release will compromise public safety. The bill would require the court to specify whatever reasonable conditions the court finds appropriate to ensure the appearance of the defendant, and would authorize the

court to release the defendant on his or her own recognizance subject to those conditions. The bill would set forth certain conditions that the court may specify, including, but not limited to, prohibiting contact with alleged victims or potential witnesses, or home detention, with or without electronic monitoring. The bill, if release will compromise public safety or will not reasonably ensure the appearance of the defendant, would require the court to ~~state the reasons for the finding and~~ set bail.

(2) Existing law requires a judge or magistrate, in setting, reducing, or denying bail, to take into consideration the protection of the public, the seriousness of the offense, the defendant's previous criminal record, and the probability of the defendant appearing at trial or a hearing.

This bill would revise the factors that the judge or magistrate would be required to consider to, among other things, require the judge or magistrate to consider the history and characteristics of the defendant, and to consider the nature and circumstances of the offense. The bill would require a judge or magistrate to also consider those factors when determining conditions for pretrial release.

(3) Existing law authorizes a court, with the concurrence of the county board of supervisors, to employ an investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognizance. In cases involving certain crimes, including violent felonies, an investigative report is required to be prepared that includes specified information, including outstanding warrants against the defendant and prior incidents where the defendant has failed to make a court appearance.

This bill would also authorize a sheriff, county probation department, or other local governmental agency, with the concurrence of the board of supervisors, to employ an investigative staff for those purposes, and would require a pretrial investigative report to be prepared before a court may order a defendant released on his or her own recognizance in any case involving specified crimes, including a violent felony. The bill would authorize the preparation of a pretrial investigation report in all other cases in which a court, sheriff, county probation department, or other local governmental agency has employed an investigative staff to recommend whether the defendant should be released on his or her own recognizance. The bill would require any pretrial investigative report to include the results of an evidence-based pretrial risk assessment, as defined, evaluating the defendant's probability of appearing at trial and potential risk to public safety. The bill would

prohibit, for purposes of preparing the report, a defendant from being interviewed about the facts and circumstances of the defendant's current offense, and would limit the use and availability of the information in the report. The bill would authorize a court, sheriff, county probation department, or other local governmental agency, with the concurrence of the board of supervisors, to employ supervision staff to monitor a defendant's compliance with release conditions ordered by the court, as specified.

(4) Existing constitutional provisions require that a statute that limits the right of access to meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by that limitation and the need for protecting that interest.

This bill would make legislative findings and declarations relating to, among other things, the necessity of treating pretrial investigation reports as confidential in order for pretrial programs to function properly.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Pretrial custody reform is urgently needed in California,
- 4 where the pretrial population far exceeds the national average of
- 5 61 percent. More than 71 percent of the 71,000 Californians held
- 6 in county jails statewide on any given day are awaiting trial.
- 7 (b) Pretrial custody reform will support the implementation of
- 8 public safety realignment by providing counties greater flexibility
- 9 in managing their pretrial populations using best practices
- 10 developed over many years across many jurisdictions.
- 11 (c) Pretrial services programs have been successfully
- 12 implemented in many jurisdictions, and have helped to reduce the
- 13 pretrial jail populations, save money, reduce recidivism, and protect
- 14 the public.
- 15 (d) Increasing the use of evidence-based practices in pretrial
- 16 population management programs will allow better empirical
- 17 analysis in pretrial decisions, and will help to ensure that the court's
- 18 decision to order release, conditions of release, and bail is based

1 on a credible assessment of the defendant's risk to public safety
2 and the likelihood of appearance as required.

3 (e) In order for pretrial programs to function properly and to
4 protect the rights of persons submitting sensitive information, it
5 is essential to treat pretrial investigation reports as confidential so
6 the reports are used only for release, bail, and monitoring
7 considerations.

8 SEC. 2. Section 1270 of the Penal Code is amended to read:

9 1270. (a) Any person who has been arrested for, or charged
10 with, an offense other than a capital offense may be released on
11 his or her own recognizance by a judge or magistrate who could
12 release a defendant from custody upon the defendant giving bail,
13 including a defendant arrested upon an out-of-county warrant. A
14 defendant who is in custody and is arraigned on a complaint
15 alleging an offense that is a misdemeanor and a defendant who
16 appears before a judge or magistrate upon an out-of-county warrant
17 arising out of a case involving only misdemeanors, shall be entitled
18 to an own recognizance release unless the court makes a finding
19 on the record, in accordance with Section 1275, that an own
20 recognizance release will compromise public safety or will not
21 reasonably ensure the appearance of the defendant as required.
22 Public safety shall be the primary consideration. If the court makes
23 one of the findings authorized by this subdivision, the court shall
24 then set bail and specify the conditions, if any, whereunder the
25 defendant shall be released.

26 (b) The court shall determine whether a defendant who is
27 charged with a felony, the sentence for which may be served in a
28 county jail pursuant to subdivision (h) of Section 1170, is eligible
29 for release on his or her own recognizance and to be ordered to
30 appear, as required. Public safety shall be the primary consideration
31 in this determination. In granting an own recognizance release, a
32 court may consider, *in its discretion*, imposing any of the following
33 conditions or any other reasonable condition that the court deems
34 appropriate to ensure public safety and to ensure the defendant's
35 appearance, as required:

36 (1) Mandatory reporting to the county, a designated law
37 enforcement agency, county probation department, or other local
38 governmental agency.

39 (2) Prohibiting contact with alleged victims or potential
40 witnesses who may testify concerning the offense.

1 (3) Restricting locations, places of abode, and travel.

2 (4) Specifying curfew.

3 (5) Restricting consumption of alcohol.

4 (6) Requiring restraint from any illegal use of a controlled
5 substance, as defined in Division 10 (commencing with Section
6 11000) of the Health and Safety Code.

7 (7) Home detention, with or without electronic monitoring.

8 (c) If the court finds that the imposition of one or more of the
9 conditions specified in subdivision (b), or any other reasonable
10 condition the court deems appropriate, would reasonably ensure
11 the defendant's appearance, as required, and the defendant's release
12 would not compromise public safety, the court may specify the
13 conditions that the court deems appropriate under which to release
14 the defendant on his or her own recognizance.

15 (d) If the judge or magistrate ~~makes a finding~~ *finds* that release
16 pursuant to subdivision (b) will compromise public safety or will
17 not reasonably ensure the appearance of the defendant, as required,
18 the court shall ~~state on the record the reasons for that finding and~~
19 ~~shall~~ then set bail as is reasonably necessary to ensure the
20 appearance of the defendant. A judge or magistrate may set bail
21 in an amount less than what is specified in the county bail schedule,
22 where he or she determines that the amount specified in the county
23 bail schedule is higher than necessary to reasonably ensure the
24 appearance of the defendant. In making this determination, the
25 court may consider information included in a pretrial services
26 report, prepared in accordance with Section 1318.1, if one is
27 available.

28 (e) Article 9 (commencing with Section 1318) shall apply to
29 any person who is released pursuant to this section.

30 SEC. 3. Section 1275 of the Penal Code is amended to read:

31 1275. (a) In determining conditions for pretrial release, and
32 in setting, reducing, or denying bail, the judge or magistrate shall,
33 on the available information, take into consideration the protection
34 of the public, the nature and circumstances of the offense charged,
35 the history and characteristics of the defendant, the previous
36 criminal record of the defendant, including whether the defendant
37 was, at the time of arrest for the charged offense, on probation,
38 parole, or other form of release pending trial, sentencing, or appeal,
39 and the probability of his or her appearing at trial or hearing of the
40 case, including the defendant's record of appearance at past court

1 hearings or flight to avoid arrest or prosecution. Public safety shall
2 be the primary consideration.

3 (b) In considering the history and characteristics of the
4 defendant, the judge or magistrate may consider any of the
5 following:

6 (1) The ties of the defendant to the community, including his
7 or her employment, the duration of his or her residence, and the
8 defendant's family attachments.

9 (2) The defendant's current educational or vocational program
10 enrollment and participation.

11 (3) The physical and mental condition of the defendant and the
12 defendant's history related to dependence on alcohol or controlled
13 substances, including past and current participation in substance
14 abuse programs and counseling.

15 (c) In considering the nature and circumstances of the offense
16 charged, the judge or magistrate shall include consideration of the
17 seriousness of the offense, the alleged injury to the victim, alleged
18 threats to the victim or a witness to the crime charged, and the
19 alleged use of a firearm or other deadly weapon in the commission
20 of the crime charged.

21 (d) In considering offenses wherein a violation of Chapter 6
22 (commencing with Section 11350) of Division 10 of the Health
23 and Safety Code is alleged, the judge or magistrate shall consider
24 both the following:

25 (1) The amounts of controlled substances alleged to be involved
26 in the commission of the offense.

27 (2) Whether the defendant is currently released on bail for an
28 alleged violation of Chapter 6 (commencing with Section 11350)
29 of Division 10 of the Health and Safety Code.

30 (e) Before a court reduces bail below the amount established
31 by the bail schedule approved for the county, in accordance with
32 subdivisions (b) and (c) of Section 1269b, for a person charged
33 with a serious felony, as defined in subdivision (c) of Section
34 1192.7, or a violent felony, as defined in subdivision (c) of Section
35 667.5, the court shall make a finding of unusual circumstances and
36 shall set forth those facts on the record. For purposes of this
37 subdivision, "unusual circumstances" shall not solely be based on
38 the fact that the defendant has made all prior court appearances or
39 has not committed any new offenses.

40 SEC. 4. Section 1318.1 of the Penal Code is amended to read:

1 1318.1. (a) A court, sheriff, county probation department, or
2 other local governmental agency, with the concurrence of the board
3 of supervisors, may employ an investigative staff for the purpose
4 of ~~recommending making a recommendation, as described in~~
5 *subdivision (c), as to whether a defendant should be released on*
6 *his or her own recognizance.*

7 (b) Whenever a court, sheriff, county probation department, or
8 other local governmental agency has employed an investigative
9 staff pursuant to subdivision (a), before a court may order a
10 defendant released on his or her own recognizance in any case
11 involving a violent felony, as described in subdivision (c) of
12 Section 667.5, or a felony in violation of subdivision (a) of Section
13 23153 of the Vehicle Code, a pretrial investigation report shall be
14 prepared *by the investigating staff's agency* recommending whether
15 the defendant should be released on his or her own recognizance.
16 The report shall include all of the following:

17 (1) Written verification of any outstanding warrants against the
18 defendant.

19 (2) Written verification of any prior incidents where the
20 defendant has failed to make a court appearance.

21 (3) Written verification of the criminal record of the defendant.

22 (4) Written verification of the residence of the defendant during
23 the past year.

24 After the report is certified pursuant to this subdivision, it shall
25 be submitted to the court for review, prior to a hearing held
26 pursuant to Section 1319.

27 (c) Whenever a court, sheriff, county probation department, or
28 other local governmental agency has employed an investigative
29 staff pursuant to subdivision (a), a pretrial investigation report may
30 be prepared in any case not involving a violent felony, as described
31 in subdivision (c) of Section 667.5, or a felony in violation of
32 subdivision (a) of Section 23153 of the Vehicle Code,
33 recommending whether the defendant should be released on his
34 or her own recognizance. *Only an agency authorized pursuant to*
35 *subdivision (a) shall issue a pretrial investigation report. Nothing*
36 *in this section shall be construed as requiring multiple reports.*

37 (d) Any report prepared pursuant to subdivision (b) or (c) shall
38 include all of the results of an evidence-based pretrial risk
39 assessment evaluating the defendant's probability of appearing at
40 trial and potential risk to public safety. "Evidence-based pretrial

1 risk assessment” is the objective, standardized analysis of
2 information about a pretrial defendant in a way that is consistent
3 with and guided by the best available scientific evidence and
4 professional knowledge that measures the risk of the defendant’s
5 probability of appearing at trial and the potential risk to public
6 safety while pending case disposition.

7 (e) In preparing the report pursuant to subdivision (b) or (c),
8 the defendant shall not be interviewed about the facts and
9 circumstances of the current offense, and any information that a
10 defendant may provide shall not be included in the report. Any
11 information provided by the defendant shall be used solely for the
12 purposes of determining whether the defendant should be released
13 on his or her own recognizance or in setting the conditions of the
14 defendant’s release or modifying a prior release order. The reports
15 may be filed as part of the case record. The reports are confidential
16 and shall be sealed upon receipt by the court and made available
17 only by court order, except that the reports shall be made available
18 upon request of any of the following:

- 19 (1) Any local or state criminal justice agency.
 - 20 (2) Any agency to which the defendant is referred for assessment
21 or treatment.
 - 22 (3) Counsel for the defendant who is the subject of the report.
- 23 (f) A court, sheriff, county probation department, or other local
24 governmental agency may, with the concurrence of the board of
25 supervisors, employ supervision staff to monitor the defendant’s
26 compliance with the release conditions ordered by the court.
27 Supervision staff may do any of the following:
- 28 (1) Notify the defendant of court appearance obligations.
 - 29 (2) Require the defendant to report periodically by mail,
30 telephone, or personal appearance to verify compliance with release
31 conditions.
 - 32 (3) Monitor and assist the defendant with complying with release
33 conditions.
 - 34 (4) Supervise a defendant placed on home detention, with or
35 without electronic monitoring, as a condition of release.
 - 36 (5) Promptly report violations of release conditions to the court.
 - 37 (6) Provide information to assist any law enforcement officer
38 with detaining a defendant supervised pursuant to this section and
39 for whom a bench warrant has been issued.

1 (g) The salaries of the staff are a proper charge against the
2 county.

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